

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

MERCK SHARP & DOHME CORP.,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC.,

Defendant.

C.A. No. 1:19-cv-101 (IMK)

STIPULATION AND [PROPOSED] ORDER REGARDING INFRINGEMENT

Plaintiff Merck Sharp & Dohme Corp. (“Merck”) and Defendant Mylan Pharmaceuticals Inc. (“Mylan”) hereby STIPULATE, and request that the Court ORDER, as follows:

1. With respect to Mylan’s ANDA Nos. 202473 and 202478, for purposes of this action, Mylan stipulates to infringement of claims 1, 2, and 19 of U.S. Patent No. 7,326,708 (“the ’708 patent”), provided that the claim at issue remains asserted at trial and is not proven invalid at trial;
2. Nothing in this stipulation precludes Mylan from pursuing any other defenses, including contesting the validity of any of claims 1, 2, or 19 of the ’708 patent;
3. With respect to Mylan’s ANDA Nos. 202473 and 202478, for purposes of this action, Plaintiff will not assert infringement of claims 4-18 or 20-24 of the ’708 patent;
4. The parties make this stipulation without prejudice to or waiver of their rights on any appeal of any judgment of this Court, except with respect to the matters of

infringement as stipulated herein. The parties also make this stipulation without prejudice to or waiver of their rights with respect to IPR2020-00040 and any appeal thereof;

5. This stipulation cannot be used for any other proceeding or for any other purpose except as expressly stipulated herein, including to argue that any other patent claims are infringed.

IT IS HEREBY STIPULATED:

Dated: December 10, 2021

Respectfully submitted,

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IT IS SO ORDERED this _____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE